IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.	§	
vs.	§	CIVIL ACTION NO. 2:03-CV-354
RICK PERRY, ET AL.	§	Consolidated

THE JACKSON PLAINTIFFS' REMEDIAL RESPONSE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

MISCELLANEOUS

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Pursuant to the Court's June 29, 2006 Order, the Jackson Plaintiffs hereby file their response to the various parties' remedial proposals.

SUMMARY OF ARGUMENT

There is little disagreement among the parties over the basic principles that must guide this Court in crafting a remedy: cure the Voting Rights Act violation in District 23, redraw the bizarrely noncompact District 25, and otherwise minimize disruption to the voters, so that the remedial plan can be smoothly implemented this November. But in drawing their remedial proposals, the parties have shown little discipline in sticking to these principles. Almost all of the proposals redraw too many districts, many of them fail to adequately protect Hispanic voting rights, some of them leave intact the 300-mile-long absurdity known as District 25, and a few of them fail even to comply with the most basic rule of redistricting — one person, one vote.

At first glance, Defendants' map, the "Perry Plan,"[1] may seem attractive, as it alters only four districts, the same number as in the Jackson Plan. But on closer inspection, the Perry Plan

[1] Defendants' Plan 1418C is referred to as the "Perry Plan" because it is submitted on behalf of Governor Rick Perry and other individual defendants, not the State of Texas, and therefore (as Defendants concede) "is not due legal deference." Defs.' Br. at 11 n.8.

presents an object lesson in how not to draw a remedial map Driven more by a desire to protect the region's two Republican incumbents than to protect the federally guaranteed voting rights of Hispanic citizens in South and West Texas, the Perry Plan gratuitously shifts well over half of the four districts' constituents (more than 1 4 million Texans) into new districts; aggressively reshuffles the district locations of incumbents and their challengers, pairing two incumbents while claiming to pair none; trims the 300-mile-long, majority-Hispanic District 25 by just 20 miles; and, worst of all, fails even to cure the Voting Rights Act violation that the Supreme Court established in this case At the same time, the Perry Plan slices San Antonio and Bexar County into an unprecedented five districts; and it further dilutes minority voting strength by splintering Austin's cohesive and compact minority community three ways, placing most of Travis County in the same district as Congressman Henry Bonilla's San Antonio residence, thereby creating what is, even by current Texas standards, an extraordinarily misshapen district, which we call "The Roadrunner That Ate Travis County." *See* Exhibit A (silhouette of Perry District 23). (*Hint*: The bird's tail is Kerr County; its claws grip northern Bexar; and you already know what happens to Travis.)

Fortunately, the Court can avoid all these problems simply by adopting the Jackson Plan (Plan 1406C) and putting it into effect for the upcoming November 2006 elections. The Jackson Plan fully cures the defects in Districts 23 and 25, complies with all federal legal requirements, adheres to the State's traditional neutral districting principles, and otherwise does what any court-ordered map should do: leave well enough alone.

The Jackson Plaintiffs therefore respectfully request that the Court adopt the Jackson Plan on or before Monday, August 7, 2006, and order Defendants to conduct the 2006 congressional elections in Districts 21, 23, 25, and 28 under that Plan.

ARGUMENT

I. The Parties Largely Agree on the Relevant Remedial Principles.

Although the parties present dramatically divergent maps, they have reached a remarkable consensus regarding the key principles that should guide this Court in fashioning a remedy for the violations that the Supreme Court found in Texas's 2003 congressional redistricting map (the "2003 Plan" or "Plan 1374C"). The key principles on which the parties largely agree are as follows:

- The Court should order implementation of a remedial redistricting map for the upcoming November 2006 election.[2]
- The Court should order a map containing six reasonably compact Hispanic opportunity districts in South and West Texas.[3]
- The Court should remedy the "§ 2 violation that the Supreme Court found, . . . centered on old District 23 [in the 2001 Plan] and implicating current District 25 [in the 2003 Plan]."[4] Specifically:
    - The Court should reassemble Webb County in one Hispanic opportunity district located in the "general geographic region of old District 23";[5]

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[2] *See* Defs.' Br. at 18; Jackson Br. at 4-5; GI Forum Br. at 2, 7; Travis County Br. at 3-5, 15; LULAC Br. at 2-4; NAACP Br. at 2-4; Bonilla Br. at 2, 4, 7-8.

[3] *See* Defs.' Br. at 2, 8; Jackson Br. at 6-9, 12-13; GI Forum Br. at 2-4; Travis County Br. at 1, 9-10 & n.6; NAACP Br. at 2-3.

[4] Defs.' Br. at 1-2; *see* Jackson Br. at 6-9; GI Forum Br. at 2-4; Travis County Br. at 15; LULAC Br. at 3, 11; NAACP Br. at 2-3; Bonilla Br. at 4.

[5] Defs.' Br. at 2, 8-9; *see* Jackson Br. at 7 & n.2; GI Forum Br. at 3, 5; Travis County Br. at 9-10; LULAC Br. at 7, 9; NAACP Br. at 2-3.

- The Court should remove from that Hispanic opportunity district the heavily Anglo "Hill Country" counties that the Texas Legislature added to District 23 in 2003;[6] and
- The Court should reject any district that traverses the "'enormous geographical distance'" from Travis County to the Mexican border.[7]

- The Court should "fully respect[]" the "remainder of the legislatively adopted [2003] Plan" by minimizing the number of districts redrawn and the number of constituents and candidates moved into new districts [8]
  - Consistent with this principle of minimizing disruption, the Court should avoid creating "pairings" of any two incumbents in one district.[9]
- The Court should maintain the 2003 Plan's perfect population equality [10]

II. Only the Jackson Plan Complies with All the Agreed-Upon Remedial Principles.

Unfortunately, the parties to the case have done better at enunciating this set of agreed principles than following them. With the exception of the Jackson Plan, none of the proposals submitted to this Court fully complies with all of the above-listed principles

Notably, most of the plans alter five, six, or even seven congressional districts, even though remedying the Section 2 violation established by the Supreme Court requires redrawing

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[6] *See* Defs.' Br. at 12; Jackson Br. at 7 & n.2; GI Forum Br. at 5; Travis County Br. at 13, 15; LULAC Br. at 8, 10; Bonilla Br. at 6.

[7] Defs.' Br. at 2, 4, 9 (quoting *LULAC v. Perry*, 126 S. Ct. 2594, 2619 (2006)); *see* Jackson Br. at 9-10; GI Forum Br. at 4; Travis County Br. at 1-3, 5-9, 12-13, 15; Bonilla Br. at 4-5.

[8] Defs.' Br. at 2, 10; *see* Jackson Br. at 5-6, 10-12; GI Forum Br. at 4-5, 6-7; Travis County Br. at 6-7; LULAC Br. at 3, 6, 10; NAACP Br. at 1-3; Bonilla Br. at 2-3.

[9] Defs.' Br. at 2, 10; *see* Jackson Br. at 17-18; GI Forum Br. at Ex. A.

[10] *See* Defs.' Br. at App. D; Jackson Br. at 12; GI Forum Br. at Ex. A; Travis County Br. at 10, 14; Bonilla Br. at 4

only four districts. For a court to redraw just one more district than is necessary is ordinarily unacceptable, as reshuffling constituencies undercuts democratic accountability by making it harder for voters to reelect those Representatives who have served them well and to throw out those who have served them poorly. But needlessly redrawing districts is doubly unacceptable here, when the general-election campaign is already underway. For each district that is redrawn, the Court will have to void the Republican and Democratic nominations, thus undoing the results of the March 2006 primaries. Candidates who ran and won in March, candidates who ran and lost, and candidates who never ran will all become eligible to qualify for the November special-election ballot. The ensuing disruption to Texas's electoral processes places a premium on changing the fewest possible districts.

But as the following table shows, few of the maps submitted to this Court comply with that criterion:

Plan	Number of Districts Redrawn	Districts Redrawn
Bonilla Plan (1422C)	7	11, 15, 20, 21, 23, 25, 28
GI Forum Plan (1417C)	6	11, 20, 21, 23, 25, 28
Travis County Plan 1 (1414C)	6	10, 15, 21, 23, 25, 28
Travis County Plan 2 (1413C)	6	10, 15, 21, 23, 25, 28
Overstreet Plan (1421C)	5	10, 21, 23, 25, 28
LULAC Plan A (1415C)	5	20, 21, 23, 25, 28
LULAC Plan B (1416C)	4	20, 21, 23, 28
Perry Plan (1418C)	4	21, 23, 25, 28
Jackson Plan (1406C)	4	21, 23, 25, 28

Only three maps (the Jackson Plan, the Perry Plan, and LULAC Plan B) succeed in altering the fewest possible districts — four.[11] And LULAC Plan B accomplishes that feat only by leaving the 2003 Plan's bizarrely noncompact District 25 fully intact. Furthermore, neither of the LULAC maps minimizes population deviations, rendering them unconstitutional under Article I, Section 2's one-person, one-vote rule.

Perhaps the most outlandish map submitted is Plan 1422C, the so-called "Bipartisan Congressional Compromise Remedy" submitted by Congressmen Henry Bonilla, Henry Cuellar, and Lamar Smith, allegedly with the support of all 20 Republican members of the Texas congressional delegation and one Democrat (Congressman Cuellar), who has subsequently obtained separate legal representation for this case. The Bonilla Plan is the only map that does not reassemble Webb County in one district. And it does not even cure the specific Section 2 violation that the Supreme Court found, as its District 23 falls short of the standards set by the marginally effective District 23 in the 2001 Plan: The version of District 23 that Congressman

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[11] Five other remedial plans are available on the Texas Legislative Council's RedViewer system. Two of them (Plans 1402C and 1403C) are labeled the "Owens Draft Four-District Remedy" and the "Owens Draft Five-District Remedy," respectively. It appears that neither was submitted to the Court, as Mr. Owens is neither a plaintiff nor a defendant and therefore falls outside the scope of this Court's June 29, 2006 Order seeking remedial proposals from "[a]ll parties (plaintiffs and defendants)." In any event, both Owens maps (a) lack population equality and (b) fail to create at least six reasonably compact Hispanic opportunity districts in South and West Texas.

Mr. Pate submitted Plans 1408C and 1407C, along with a motion for leave to file remedial plans as an *amicus curiae*. Plan 1408C alters only four districts, but it (a) lacks population equality, (b) fails to create at least six reasonably compact Hispanic opportunity districts in South and West Texas, (c) leaves the Hill Country counties in a majority-Hispanic district, rendering it ineffective as a minority opportunity district; and (d) contains bizarre lines within Bexar County. Plan 1407C affects only three districts, but it contains the same flaws as Plan 1408C, and in addition it fails to alter, much less fix, the 2003 Plan's noncompact District 25. Finally, Plan 1423C, labeled "PMCK Remedial Plan" on the RedViewer system, apparently was never submitted to the Court; in any event, it shares virtually all the flaws that mar Plan 1408C, and it has even higher population deviations.

Bonilla proposes would contain almost 7,500 ***fewer*** Hispanics, have a lower Hispanic citizen voting-age population (CVAP) percentage, have a lower percentage of Spanish-surnamed registered voters, and have a lower Democratic performance percentage (based on either the 2002 or 2004 general elections). All these defects are packaged with peculiarly contorted lines in Hidalgo County that splinter heavily Hispanic, low-turnout, and impoverished communities; a District 28 that is even longer than the 2003 Plan's District 25; and a map that would change seven districts, needlessly impacting nearly two million Texans outside the four districts that have to be changed (Districts 21, 23, 25, and 28).[12]

Because only two parties have submitted maps that confine their line changes to those four districts — the Jackson Plan and the Perry Plan — the remainder of this Response Brief will focus on those two maps

III. The Perry Plan Violates the Remedial Principles That Bind This Court.

As explained in the Jackson Plaintiffs' July 14, 2006 Remedial Brief, the Jackson Plan complies with every principle set forth on pages 3 to 4 of this Brief The Perry Plan does not

The Jackson Plaintiffs refer to Plan 1418C as the "Perry Plan" because the Defendants properly noted in their July 14 brief that the map is submitted on behalf of Governor Rick Perry and other individual defendants, not the State of Texas, and therefore "is not due legal deference." Defs ' Br at 11 n 8.

[12] Sometime after this Court's July 14, 2006 deadline for submitting remedial proposals, a Plan 1425C, labeled " Amended Bipartisan Congressional Compromise" appeared on the Texas Legislative Council's RedViewer system. As far as the Jackson Plaintiffs are aware, this map has never been submitted to the Court by a party or a nonparty, either before or after the July 14 deadline In any event, Plan 1425C appears to be virtually identical to Plan 1422C, except that it leaves Districts 11 and 20 undisturbed, thus becoming a five-district, rather than a seven-district, proposal. Otherwise, it shares all of Plan 1422C's flaws.

A. The Perry Plan Would Not Fully Remedy the Section 2 Violation in District 23.

The Perry Plan would fail to remedy the Section 2 violation in District 23 in three ways. *First*, the Perry Plan would continue to deny Hispanic voters in South and West Texas the opportunity to replace an Anglo-preferred Congressman with a candidate of their choice. *Second*, the Perry Plan would fail to vindicate the Section 2 rights of more than 40,000 Hispanic residents of Bexar County, contrary to the Supreme Court's ruling. *Third*, the Perry Plan would decimate the voting strength of minority citizens in Austin and Travis County.

1. The Perry Plan Would Continue To Thwart Hispanic Voters' Efforts To Replace an Anglo-Preferred Congressman with a Candidate of Their Choice.

Defendants attempt to distract this Court from what is really at stake in this case, and indeed in any suit brought under Section 2 of the Voting Rights Act: whether minority voters, or Anglo voters, will be represented by their preferred candidates. A districting plan violates Section 2 only when the combination of racially polarized voting and the districts' configurations operate to elect too many Anglo-preferred candidates and too few minority-preferred candidates. In *Voinovich v. Quilter*, 507 U.S. 146 (1993), a unanimous Supreme Court explained that Voting Rights Act claims focus "exclusively on the consequences" of redistricting and on "electoral outcomes." *Id.* at 154-55. Justice O'Connor likewise stated that "electoral success" is "the linchpin of vote dilution claims" under Section 2 of the Voting Rights Act. *Thornburg v. Gingles*, 478 U.S. 30, 93 (1986) (O'Connor, J., concurring in the judgment). And perhaps Justice Scalia, writing for a unanimous Court in *Growe v. Emison*, 507 U.S. 25 (1993), put it most clearly: Unless Section 2 plaintiffs can prove that their minority group (a) has the potential to elect its preferred representative in a new, remedial district and (b) is unable to do so under the challenged districting plan, "there neither has been a wrong nor can be a remedy." *Id.* at 40-41.

Therefore, remedying an established Section 2 violation requires reconfiguring districts to increase the number of minority-preferred candidates likely to be elected and, concomitantly, to decrease the number of incumbents who are preferred by Anglo voters but not by minority voters. Inevitably, any valid Voting Rights Act remedy will threaten the reelection of at least one incumbent who is supported by Anglo voters and opposed by minority voters. That is the very point of a Section 2 case.[13]

In the four-district region of South and West Texas at issue here, uncontroverted evidence from the 2003 trial showed that two incumbents fit that description: Congressman Lamar Smith and Congressman Henry Bonilla. Neither the Perry Plan nor the Jackson Plan would threaten Congressman Smith's reelection prospects. But as for Congressman Bonilla, the Plans present a sharp contrast: The Perry Plan would protect him in a heavily Anglo, largely suburban district where Hispanic voters indisputably would have no opportunity to elect their preferred candidate, while the Jackson Plan would return him to a highly competitive, majority-Hispanic district where Hispanic voters would have some realistic opportunity — though far from a guarantee —

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[13] Judge Kozinski has recognized this tension between protecting incumbents and protecting minority voting rights:

> Protecting incumbency and safeguarding the voting rights of minorities are purposes often at war with each other. Ethnic and racial communities are natural breeding grounds for political challengers; incumbents greet the emergence of such power bases in their districts with all the hospitality corporate managers show hostile takeover bids. What happened here — the systematic splitting of the ethnic community into different districts — is the obvious, time-honored and most effective way of averting a potential challenge. Incumbency carries with it many other subtle and not-so-subtle advantages, . . . and incumbents who take advantage of their status so as to assure themselves a secure seat at the expense of emerging minority candidates may well be violating the Voting Rights Act.

Garza v. County of Los Angeles, 918 F.2d 763, 778 (9th Cir. 1990) (Kozinski, J., concurring in part) (citation omitted), *cert. denied*, 498 U.S. 1028 (1991).

of replacing him with a candidate of their choice. That, in a nutshell, is why the Jackson Plan cures the Section 2 violation, and the Perry Plan does not.

Congressman Bonilla has represented most of the residents of the Jackson Plan's District 23 for nearly 14 years. He is fully capable of campaigning to win Hispanic support there and doesn't need Defendants to create a safe haven of suburban Anglos for him. Defendants are inappropriately engaging in a shell game where district numbers and hundreds of thousands of Texans are shifted around for the purpose of frustrating voters and protecting Republican incumbents who already have the money and political resources to compete fairly on their own.

Defendants seem to take great pride in announcing that the Perry Plan "does not attempt to alter" the congressional delegation's composition. Defs.' Br. at 13. But rather than being a point of pride, that statement is a powerful admission that Defendants did not even ***attempt*** to cure the Voting Rights Act violation that the Supreme Court identified.

2. The Perry Plan Would Deny 40,000 Bexar County Hispanics Their Section 2-Protected Voting Rights.

The Supreme Court specifically identified the persons whose Section 2 voting rights were trampled by the 2003 Plan: the Hispanic citizens who resided in the old District 23 under the 2001 Plan but now reside in current District 23 under the 2003 Plan. In the 2001 version of District 23, Hispanic voters cast 92% of their ballots against Congressman Bonilla and nearly toppled him in the November 2002 general election. In the 2003 version of District 23, Anglos hold a decisive majority of the adult citizen population, and it is undisputed that Hispanics lack any realistic hope of electing a Representative of their choice.

The Perry Plan would leave 40,000 of those illegally injured Hispanics in a district that Defendants admit is designed to elect Congressman Bonilla rather than a Hispanic-preferred candidate. *See* Defs.' Br. at 13-14. These 40,000 Hispanics, residing in northwestern Bexar

County, were deprived of their Section 2 rights by the 2003 Plan and would continue to be deprived of those rights by the Perry Plan.[14] As the Supreme Court reiterated in this case, the right to an undiluted vote belongs to a racial group's ***individual*** members, not to the group itself, and therefore the Section 2 rights of some members of the group cannot be traded off against the rights of other members. *LULAC v. Perry*, 126 S. Ct. 2594, 2620 (2006) (citing *Shaw v. Hunt*, 517 U.S. 899, 916-18 (1996); *Johnson v. De Grandy*, 512 U.S. 997, 1019 (1994)).

The Jackson Plan demonstrates that curing the Voting Rights Act violation does not require placing 40,000 residents of former and current District 23 in an indisputably Anglo-controlled district. That defect, like many other defects in the Perry Plan, flows from Defendants' overarching concern for protecting Congressman Bonilla's incumbency, even at the expense of Hispanic voting rights.

Defendants intimate that these Bexar County Hispanics will not truly be injured because they will continue to be represented by Congressman Bonilla, who, they note, is a "minority" candidate. Defs.' Br. at 10 n.7. But what matters under the Voting Rights Act is the race of the voters, not the candidates. *See Thornburg v. Gingles*, 478 U.S. at 64-70 (plurality opinion). And Hispanic voters have consistently, and increasingly, voted against Congressman Bonilla, who they perceive to be "'unresponsive to the[ir] particularized needs.'" *Perry*, 126 S. Ct. at 2622 (citation omitted). That perception got a boost just last week, when Congressman Bonilla voted

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[14] As Exhibit B (*see* page 2, the third and fourth lines of data) shows, 39,709 Hispanics were moved from the 2001 Plan's marginally effective District 23 to the 2003 Plan's indisputably ineffective District 23 and then to the Perry Plan's District 23, also an indisputably Anglo-controlled district. Similarly, 394 Hispanics were moved from the 2001 Plan's District 23 to the 2003 Plan's District 23 and then to the Perry Plan's District 21, another indisputably Anglo-controlled district. Together, the Perry Plan would deprive 40,103 Hispanics of their Supreme Court-recognized Section 2 rights to live in a district where they can nominate and elect a candidate of their choice.

for all four House floor amendments to weaken the Voting Rights Act, while every Hispanic-preferred Representative in Texas's congressional delegation voted the opposite way.[15]

3. The Perry Plan Would Decimate Minority Voting Strength in Austin and Travis County.

A further consideration under Section 2's "totality of circumstances" inquiry is the Perry Plan's likely effect on neighboring minority communities. 42 U.S.C. § 1973(b); *cf. Perry*, 126 S. Ct. at 2619-23. The Perry Plan fails on this score, too, as it would decimate minority voting strength in Austin and Travis County.

Under the Court-drawn 2001 Plan, District 10 was located entirely within Travis County. With a total population that was less than one-half Anglo and nearly one-third Hispanic, the district offered Latinos in and around Austin a real opportunity to form effective coalitions with African-American and Anglo voters, in an example of the kind of cross-racial coalition building that the Voting Rights Act is supposed to encourage.

The 2003 Plan trisected Austin, extracting the city's predominantly Hispanic neighborhoods and tying them to the border region 300 miles away. But even under the 2003 Plan, most of Travis County's Hispanics (and most of its African-Americans) still lived in a district where they could elect their preferred Representative to Congress. That is precisely what they did in the 2004 primary and general elections, when they reelected Austin's Congressman, Lloyd Doggett, in District 25.

But under the Perry Plan, District 25 would include none of Travis County or Austin. Defendants claim that the Perry Plan's District 21 includes "that portion of Travis County that was removed from current District 25." Defs.' Br. at 13. That is false. In fact, the Perry Plan

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[15] *See* Final Vote Results for Roll Calls 370-373 (July 13, 2006), *available at* http://clerk.house.gov/evs/2006.

actually bisects the portion of Travis County that is currently in District 25, much to the detriment of Austin's minority voters. The Perry Plan would place almost 100,000 of Congressman Doggett's Travis County constituents into a misshapen Anglo-controlled district (District 23) that swings 120 miles to the west, deep into the Hill Country, and drops down into northern Bexar County to pick up Congressman Bonilla's residence. The other 155,000 of Congressman Doggett's Travis County constituents would be placed in an Anglo-controlled district (District 21) that stretches nearly to downtown San Antonio, picking up the home of Congressman Smith and nearly a quarter-million other Bexar County residents.

The impact of re-slicing Austin and Travis County would be severe. Under the Perry Plan, Travis County, the traditional stronghold of progressive Democratic politics in the State of Texas — home to a third of a million Hispanics and African-Americans — would be represented in Congress by three Anglo-preferred, minority-opposed Republican Members of Congress: Congressman Smith of San Antonio (representing a new district whose registered voters would be 77% non-Hispanic), Congressman Bonilla of San Antonio (in an 85% non-Hispanic district), and Congressman Michael McCaul (in a 90% non-Hispanic district). Travis County's Hispanic voters would not constitute even a modestly influential minority within any Texas congressional district. That result is at odds not only with the goals of the Voting Rights Act, but also with the policy preferences that the Texas Legislature adopted and applied in 2003 when it kept the core of Travis County's minority community in a district where it could exercise real political power.[16]

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[16] Outside of Travis County, Defendants cannot credibly contend that their Plan's two Hispanic districts are "more" effective than the Jackson Plan's two Hispanic districts. With only a handful of exceptions, the same candidates have prevailed in both general elections and Democratic primaries in all four Hispanic districts (Perry Districts 25 and 28, and Jackson Districts 23 and (Cont'd . . .)

B. The Perry Plan Would Not Fully Remedy the Defects in District 25.

The Perry Plan also fails to remedy the defects in the 2003 Plan's District 25, the long, stringy district connecting McAllen in the Rio Grande Valley to Austin, 300 miles to the north. In explaining why that district is not protected by the Voting Rights Act, the Supreme Court pointed to two defects: *first*, the district covers "the enormous geographical distance" separating the Hispanic community in the Valley from the Hispanic community "in and around Austin," *Perry*, 126 S. Ct. at 2619; *second*, these two Hispanic communities have "disparate needs and interests," with "'differences in socioeconomic status, education, employment, health, and other characteristics,'" *id* at 2613, 2619 (citation omitted). Neither of these defects is fully cured by the Perry Plan.

The Perry Plan's District 25 continues to run nearly 300 miles north from the Rio Grande Valley (in Hidalgo County) all the way to the edge of Travis County, in the heart of Central Texas. The Plan lops off the district's heavily Hispanic tip in Austin and makes up for that population by fattening the district westward into San Antonio and five rural counties. But the fundamental architecture of the district remains much like before. *See* Exhibit C (silhouette of the Perry Plan's District 25)

Indeed, the Perry Plan's District 25 is only 20 miles shorter than the 2003 Plan's District 25. The southern end of the Perry Plan's District 25 — Hidalgo, Starr, Zapata, Jim Hogg, and Duval Counties — contains just over half the district's total population and is identical to the

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(. . . cont'd)

28). In the eight statewide Democratic primary (and primary runoff) elections held in 2002 and 2004, the same candidate prevailed in all four districts. And the same was true in 16 of the 20 statewide general elections held in 2002 and 2004. The only exceptions were that the Hispanic-preferred candidates in three 2004 general elections and one 2002 general election lost in the Jackson Plan's District 23. *See* Jackson Br. at 9 (citing evidence that the Jackson Plan's District 23 is an effective Hispanic opportunity district but "hardly a 'safe' district").

southern end of the Jackson Plan's District 28. But the Jackson Plan's District 28 stops at Karnes County, southeast of San Antonio, while the Perry Plan's district extends three counties further north, as it takes up two majority-Anglo counties (Wilson and Gonzales) on its way to grabbing majority-minority Caldwell County. Caldwell County is part of the Austin metropolitan statistical area (defined by the U.S. Office of Management and Budget), the Austin-based Capital Area Council of Governments, the Austin radio market, and the Austin television market. Adding those three counties and penetrating the Austin metropolitan area, as the Perry Plan would do, boosts the district's total Hispanic percentage to 79.9%, well above the Hispanic percentages in the three "bacon strip" districts that the Legislature drew in 2003. (By comparison, the 2003 Plan's "bacon strips" — Districts 15, 25, and 28 — were only 69.0%, 68.6%, and 64.5% Hispanic, respectively.) As the Jackson Plan amply demonstrates, the entire northern appendage of the Perry Plan's District 25, extending all the way to the Travis County line, is unnecessary.[17]

Moreover, extending the district northward to capture Hispanic population in the Austin metropolitan area smacks of the same racial essentialism that infected the 2003 Plan. The Supreme Court correctly referred to "the Latino community . . . in ***and around*** Austin" as being a single community with its own distinct "characteristics, needs, and interests." *Perry*, 126 S. Ct. at 2618-19 (emphasis added). To assume that Hispanics in the Austin area and Hispanics in the McAllen area "belong" in the same district is to engage in rank stereotyping. As Justice Kennedy said 15 years ago in *Edmondson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), "If our society is to continue to progress as a multi-racial democracy, it must recognize that the

[17] Attaching Caldwell County to a Valley-based district and thus separating it from southern Travis County and from eastern Hays County also causes the Perry Plan to split three small municipalities that are left intact under the Jackson Plan.

automatic invocation of race stereotypes retards that progress and causes continued hurt and injury." *Id* at 630-31. Adopting the Perry Plan would be a step backward for all Texans.

C. The Perry Plan Would Needlessly Disrupt Constituencies Created by the 2003 Map.

Defendants correctly state that "the Court should target its remedy to the affected region of the State while causing as little disruption as possible to the legislative policy preferences embedded in the remainder of the map." Defs.' Br. at 8. But a federal court also must minimize disruption to ***the map itself***, and not just to the policy preferences embedded in it.

In *White v. Weiser*, 412 U.S. 783 (1973), another Texas congressional redistricting case, the Supreme Court reversed the remedial redistricting order of a three-judge district court. The judges had erred when they rejected a proposed remedy that would have cured the established violations while "most clearly approximat[ing]" the district "locations and configurations found appropriate by the duly elected members of the two houses of the Texas Legislature." *Id* at 795-96. The Supreme Court instructed district courts to adopt whichever remedial plan provides "remedies fully adequate to redress [the] violations which have been adjudicated and must be rectified," while maximally "preserv[ing] the constituencies" from the partly invalid map. *Id* at 797. This principle — favoring the remedial map that is most faithful to the districts in the state legislature's most recently enacted plan — has been followed consistently by the federal courts here in Texas and elsewhere. *See, e.g., Terrazas v. Clements*, 537 F. Supp. 514, 528 (N.D. Tex. 1982) (three-judge court) ("In choosing among plans for implementation, a court should select the plan most nearly adhering to the district configurations in the State's enactment to the extent that such adherence does not detract from constitutional [or statutory] requirements.").

In drawing the Perry Plan, Defendants have ignored this bedrock principle of federalism and judicial restraint. Rather than trying to minimize disruption to the configurations of the four

affected districts, so that the voters can continue to hold their elected Representatives accountable, Defendants have sought to minimize disruption to the reelection prospects of their favored incumbents.

1. The Perry Plan Would Needlessly Move Hundreds of Thousands of Texas Voters into New Districts.

Comparing the Perry Plan to the Jackson Plan demonstrates why the former would be excessively disruptive to Texas voters. All told, the Perry Plan would move more than 1.4 million Texans into new districts — ***more than half*** of the entire population of the four districts combined. *See* Defs.' Br. at Exs. E-5 & E-6. To put that figure in perspective, the 2003 Plan, which redrew the entire State and engineered an immediate six-seat Republican pickup, moved less than 40% of all Texans into new districts. *See Perry*, 126 S. Ct. at 2630 (Stevens, J., dissenting in part). So the Perry Plan actually would move more voters per district than did the 2003 Plan.

That level of disruption is wholly unnecessary. The Jackson Plan — which, unlike the Perry Plan, fully cures the defects in Districts 23 and 25 — moves 272,615 fewer Texans than does the Perry Plan.

Defendants' Plan would change district configurations not to benefit voters, but to benefit incumbents, especially Congressman Bonilla. His district would keep only 231,700 of its current constituents, most of whom live in the Hill Country (Kerr and Kendall Counties) or in the heavily Republican precincts of northern Bexar County. But the district would jettison the vast bulk of its territory and 420,000 of its constituents, including many of the Hispanic voters who have become his staunchest political adversaries. Thus, Defendants' assertion that the Perry Plan's District 23 "covers ***much*** of the population and geography removed from current District

23, currently represented by Congressman Henry Bonilla," is quite misleading. Defs.' Br. at 13 (emphasis added)

Moreover, Defendants are once again engaging in the very form of incumbent protection that Justice Kennedy rightly condemned as anti-democratic: "If the justification for incumbency protection is to keep the constituency intact so the officeholder is accountable for promises made or broken, then the protection seems to accord with concern for the voters. If, on the other hand, incumbency protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. By purposely redrawing lines around those who opposed Bonilla, the state legislature took the latter course." *Perry*, 126 S. Ct. at 2622-23. By submitting the Perry Plan, Defendants are attempting to lead this Court down the same crooked path.

Under the Perry Plan, the problem of excessive disruption would not be confined to one district. Having removed 420,000 residents from Congressman Bonilla's district, Defendants then have to move nearly 400,000 residents out of Congressman Henry Cuellar's District 28. And that in turn leads to sizable shifts in both District 21 and District 25. In Travis County alone, more than 530,000 Texans would be stripped of the ability to vote for or against their current Congressman in the upcoming election.

By contrast, the Jackson Plan keeps more than half a million of Congressman Bonilla's current constituents in his West Texas-based District 23. As the Supreme Court surely contemplated, it undoes the 2003 swap between eastern Webb County and the three Anglo counties in the Hill Country. To reach the population target of 651,619 persons, the district also picks up the two rural counties (LaSalle and Frio) that lie directly between Laredo and San Antonio (along Interstate-35) and shifts a handful of precincts in western Bexar County. The

three Hill Country counties that the Legislature added to District 23 to dilute its Hispanic voting strength (Kerr, Kendall, and Bandera Counties) are all returned to their historic home in District 21. That district then collects the northern and eastern suburbs and exurbs of San Antonio, rather than entering (and trisecting) Travis County. The Jackson Plan gives the southern parts of two adjoining "bacon strips" — District 28 (minus eastern Webb County) and District 25 — to the new District 28, while refusing to extend the district north of San Antonio. And finally, the Jackson Plan gives the northern part of District 25, plus a wide swath of Travis County, to the new District 25, which becomes a compact Austin-dominated district.

Three of the four current districts are less disrupted in the Jackson Plan than in the Perry Plan. The lone exception, of course, is the Perry Plan's District 25, because Defendants opted to continue running that majority-Hispanic district from the Rio Grande Valley all the way up to the edge of Travis County, nearly 280 miles to the north. So the one district that is less disruptive in the Perry Plan is less disruptive precisely because it fails to fix the district's fundamental, structural problem — its effort to link Hispanics from the Valley with Hispanics from the Austin metropolitan area.

The Jackson Plan's much more sensible alignment creates two genuinely competitive districts (Districts 23 and 25) where ticket-splitting, independent-minded voters willl have real influence, rather than preordaining (as the Perry Plan does) that two districts must be safely Democratic and two districts must be safely Republican. In short, the Jackson Plan comports with traditional state districting principles, while the Perry Plan serves its partisan masters.

2. The Perry Plan Would "Pair" Two Incumbents, "Unpair" the Other Two Incumbents, and Remove a Duly Nominated Challenger from an Incumbent's District.

Perhaps Defendants' partisan agenda shows through most clearly in their approach to "pairing." Their brief asserts repeatedly that the Perry Plan pairs no two incumbents in the same district. *See* Defs.' Br. at 2, 10, 12-13. That is not true.

As noted in the Jackson Plaintiffs' opening brief (at page 17) and as attested to in a sworn declaration attached as Exhibit D to this Response Brief, Congressman Doggett resides in Austin ***and in District 25*** under the 2003 Plan (and therefore also under the Jackson Plan). But under the Perry Plan he would reside in District 21, where he would be paired with Congressman Smith.

Defendants surely knew this fact when they wrote their brief. They went out of their way to refer to "Congressman Lloyd Doggett, who under both the current plan and Plan 1418C [the Perry Plan] physically resides in District 10 ***according to the RedAppl database***." Defs.' Br. at 13 (emphasis added). The RedAppl database did indeed contain this error. But if Defendants were unaware that the database was in error, surely they would not have used such twisted language. Rather, they simply would have said, "Congressman Doggett resides in District 10," period.

Thus, it appears that Defendants have knowingly replicated one of the most devious features of the 2003 Plan — pairing an Anglo Democratic incumbent with an Anglo Republican incumbent in an overwhelmingly Republican district, thus effectively forcing the Democrat to uproot his family and move to a new home or to run in a district where he doesn't live (as federal law permits). Whatever one might think of such partisan manipulations when undertaken by a state legislature, they surely are "inappropriate for a federal court drawing a congressional

redistricting map." *Balderas v. Texas*, Civ. Action No. 6:01CV158, slip op. at 10 (E.D. Tex. Nov. 14, 2001) (three-judge court) *(per curiam)*, *summarily aff'd*, 536 U.S. 919 (2002).

The Perry Plan also skillfully removes from Congressman Smith's District 21 the home of his current challenger, John Courage, who won the nomination in the March 2006 primary. According to the Federal Election Commission, Courage's campaign already has raised close to $200,000.[18] Under the 2003 Plan and the Jackson Plan, Mr. Courage and Congressman Smith both live in District 21's portion of San Antonio. But under the Perry Plan, Congressman Smith's District 21 surrounds Mr. Courage's residence to the north, east, and south, but stops one block short of Courage's home on Broken Oak Street, which would be relocated to District 23. (For a map showing the Bexar County portion of Congressman Smith's District 21 under the Perry Plan, see Exhibit E.)

By contrast, the Jackson Plan steadfastly maintains the status quo with regard to incumbents and challengers alike. *See Vera v. Bush*, 933 F. Supp. 1341, 1349 & n.11, 1351 n.15 (S.D. Tex.) (three-judge court) (attempting "to ensure that challengers [nominated in the March primaries] as well as incumbents reside in the interim districts" and thus "remain viable candidates" in the court-ordered November special elections), *stay denied sub nom. Bentsen v. Vera*, 518 U.S. 1048 (1996). The Jackson Plan does not pair Congressman Smith; nor does it remove from his district his duly nominated challenger. It does not pair Congressman Doggett. And it does not "unpair" Congressmen Bonilla and Cuellar, but instead leaves both of them in District 23, where they have both long resided under the 2003 Plan, the 2001 Plan, and even the 1991 Plan.

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[18] *See* FEC Financial Summary Report, *available at* http://herndon1.sdrdc.com/cgi-bin/cancomsrs.

Defendants counter that incumbent Congressmen Bonilla and Cuellar should not be "paired in a district designed to remedy a § 2 violation" because doing so "could serve to reduce the number of minority Members of Congress elected from [Texas]." Defs.' Br. at 10 & n.7; *see also id.* at 12 (referring to the "salutary effect" of moving Congressman Bonilla's residence into "a new district"). That makes no sense. Once again, Defendants seem fixated on the race of the candidates, rather than the voters. In 2003, Texas violated the Voting Rights Act by redrawing District 23 to protect an Anglo-preferred incumbent (who happened to be Hispanic) from an increasingly active and cohesive Hispanic community. Pairing that Anglo-preferred incumbent with a Hispanic-preferred incumbent in 2006 can only ***enhance*** the minority group's electoral opportunity, so long as the open seat created by the pairing is also an effective Hispanic opportunity district (as is the case in the Jackson Plan). Under the Jackson Plan, Congressman Cuellar could choose to continue campaigning in District 28 (where most of his current constituents reside) or to run instead in District 23 (where he has always resided). But either way, he will be afforded the opportunity to be reelected, and a Hispanic-preferred Hispanic Democratic newcomer will have a legitimate chance of victory in the other Hispanic opportunity district. Logically, the prospect that Congressman Cuellar might run against Congressman Bonilla in the Jackson Plan's District 23 could only increase the chance that Hispanic voters there will finally succeed in electing their preferred Representative to Congress.

D. The Perry Plan Would Not Adequately Comply with Texas's Traditional, Neutral Districting Principles.

The Perry Plan also falls well short of the Jackson Plan on the seven traditional neutral districting principles identified in the Jackson Plaintiffs' opening brief. *See* Jackson Br. at 13-18. These failings alone are reason enough to reject the Perry Plan and adopt the Jackson Plan.

1. Contiguity

Although all four districts in the Perry Plan technically are contiguous, District 23 narrows to a 10-mile-wide neck to enter northern Bexar County and a 7-mile-wide neck to enter western Travis County. These form the ankles and the beak, respectively, of "The Roadrunner That Ate Travis County." And just like the narrow necks in the 2003 Plan's District 25, they highlight the contrived nature of Defendants' district configurations.

2. Respect for Counties

The Perry Plan divides Bexar County — whose population is equivalent to 2.14 congressional districts — into five districts, which would be a record for the County. And it divides Travis County — whose population is equivalent to 1.25 districts — into three districts, tying the record established by the 2003 Plan. While there may be some benefit in ensuring that a large metropolitan county like Bexar or Travis is represented by Congressmen on both sides of the aisle, once that goal has been achieved, further fragmentation is likely to do the county and its residents more harm than good. In splicing each county into more than twice as many districts as its own population could support, Defendants clearly have gone overboard.

The only amelioration they offer is that the Perry Plan would make Hays County whole — something that neither this Court in 2001 nor the Texas Legislature in 2003 chose to do. So, as the following table shows, the Perry Plan's net effect is to create one more county fragment than does the Jackson Plan.

County	Perry Plan	Jackson Plan
Bexar County	5 districts	4 districts
Hays County	1 district	2 districts
Travis County	3 districts	2 districts

3. Respect for Municipalities

The Perry Plan is markedly inferior to the Jackson Plan in respecting Texas's municipalities. Most significantly, the Perry Plan does to San Antonio and Austin what it does to Bexar and Travis Counties generally — needlessly fragmenting them into five and three districts, respectively. And as the following table shows, the Perry Plan's treatment of small municipalities is particularly shabby. All told, the Perry Plan splits six municipalities that the Jackson Plan leaves intact, while the Jackson Plan splits only one municipality that the Perry Plan leaves intact. In total, the Perry Plan's net effect is to create eight more municipal fragments than does the Jackson Plan.[19]

[19] The Jackson Plan splits a few more precincts, or VTDs (voter tabulation districts), than the Perry Plan splits. Although the Texas Legislative Council's split VTD report shows the Jackson Plan with 12 split precincts in Bexar and Hays Counties, four of the precinct splits in Bexar County involve no population and therefore have no practical effect. If the other eight splits were eliminated by making each precinct whole, the Jackson Plan's total population deviation would still be well under one tenth of one percent. *Cf. Vera v. Bush*, 933 F. Supp. at 1348.

Municipality	Population	Split by Perry Plan	Split by Jackson Plan
Austin	656,562	4 districts	3 districts[20]
Converse	11,508	3 districts	no
Fair Oaks Ranch	4,695	2 districts	no
Mustang Ridge	785	2 districts	no
Niederwald	584	2 districts	no
San Antonio	1,144,646	5 districts	4 districts
St. Hedwig	1,875	no	2 districts
Uhland	386	2 districts	no
Universal City	14,849	2 districts	no

4. Respect for Texas's Regions

The Perry Plan pays significantly less respect than the Jackson Plan pays to Texas's long-standing regions, as defined by the Texas Association of Regional Councils of Government. The chief culprit here, not surprisingly, is the Perry Plan's District 25, which meanders from Hidalgo County all the way north to the Travis County line. In so doing, it crosses through ***seven*** regions. That compares poorly to the Jackson Plan's Hidalgo-based district (District 28), which takes in parts of only four regions. This contrast is not merely an artifact of how the regional councils of government drew their borders: The Perry Plan's District 25 also cuts through more television markets and more radio markets than does the Jackson Plan's District 28. These features would

[20] As the City of Austin correctly notes (*see* Travis County Br. at 5 n.5), a piece of Austin (with 11,810 residents) lies in Williamson County, which would remain wholly in District 31 under any of the proposed maps. The Jackson Plaintiffs overlooked this fact in their opening brief, which claimed that the Jackson Plan splits Austin into only two pieces. *See* Jackson Br. at 14-15. The Jackson Plan splits the ***Travis County portion of Austin*** into only two pieces.

make the Perry Plan's district more expensive to campaign in — a particularly critical issue in a minority opportunity district — and harder to represent in Congress, as its constituents would share fewer common interests.

District	Regions Touched by the District in the Perry Plan	Regions Touched by the District in the Jackson Plan
District 21	2	2
District 23	2	6
District 25	7	2
District 28	6	4
TOTAL	17	14

5. Respect for Communities of Interest

Precisely because the Perry Plan pays less respect to counties, municipalities, and regions, it also disrespects communities defined by actual shared interests. *See Balderas*, slip op. at 7 n.14 ("'Residents of political units such as townships, cities, and counties often develop a community of interest, particularly when the subdivision plays an important role in the provision of governmental services.'" (citation omitted)).

Moreover, as explained in the attached sworn declarations of Texas State Senators Leticia Van de Putte and Gonzalo Barrientos (Exhibits F and G, respectively), the specific ways that the Perry Plan splices and dices Bexar County (and San Antonio) and Travis County (and Austin) are particularly troubling.

a. Bexar County and San Antonio Communities of Interest.

The Perry Plan splits the South Side of San Antonio and Bexar County, moving almost 128,000 residents, including 67,280 Hispanics and 29,750 African Americans, out of District 28 and into District 25, which is anchored in the Rio Grande Valley. This splitting of the South

Side community would take effect just as economic development projects like the new Toyota plant and the new Texas A&M campus are underway in District 28, near the Perry Plan's proposed boundary with District 25. These projects will serve to further unite the South Side of San Antonio, just as the Brooks City Center, which is also located in District 25 near the proposed border with District 28 (along Military Drive), has traditionally been an economic hub for the South Side. Likewise, the Mission Trails historic project literally straddles part of the Perry Plan's District 25/28 boundary line — further evidence that this line was drawn with politics, not community, foremost in mind.

Near the center of the city, the Perry Plan would split off the heavily Hispanic Riverside community, an area with an extremely high density of federal low-income housing, and place it in District 25, which is based in the Rio Grande Valley. And the predominantly African-American community to the east of downtown San Antonio would be placed in the same Valley-dominated District 25. Farther to the south, the heavily Hispanic Harlandale neighborhood would be split from Highland Hills, an area where rapid Hispanic growth is underway as families grow and move from neighboring Hispanic neighborhoods. Again, the Perry Plan's specific lines through San Antonio and Bexar County seem disconnected from local socioeconomic realities.

b. *Travis County and Austin Communities of Interest.*

The Perry Plan separates the entire South Austin Hispanic community west of Interstate-35 from the Hispanic neighborhoods of East and Southeast Austin and places it in District 23. This area of South Austin includes many neighborhoods along South First Street, Manchaca Road, and Brodie Lane that are experiencing rapid Hispanic growth as the Austin Hispanic community extends southward.

The Perry Plan also wreaks havoc on Austin's African-American community by extending an arm of District 23 east of Interstate-35 into the integrated and politically active University Hills and Windsor Park neighborhoods. That arm would create a wedge between Districts 10 and 21 that would split the African-American community into three Anglo-dominated districts where they would have virtually no voice.

The Bexar and Travis County neighborhoods discussed here are just a few of those that would be adversely affected under the Perry Plan. The fact that many of them are heavily Hispanic or African-American and overwhelmingly Democratic may explain why Defendants and their mapmakers were unaware of how their district lines would operate on the ground. It would be a cruel irony if a federal court tasked with the duty of remedying a Voting Rights Act violation ended up sundering these minority communities and thereby silencing their already weak voice in Texas and national politics

6. Compactness

The Perry Plan's districts are significantly less compact and more ragged than the Jackson Plan's districts. This disparity is apparent from the districts' "perimeter-to-area" scores, which capture the jaggedness of districts' edges and therefore often signal the presence of gerrymandering, where district lines were surgically carved to exclude from a district certain "undesirable" types of voters while including other types. By this measure, three of the four Jackson Plan districts are more compact than ***any*** of the Perry Plan districts. And the "Roadrunner" — the Perry Plan's District 23 — is particularly egregious, with a noncompactness score of 8.0. That high score is likely the byproduct of the district's jaggedness within Bexar and Travis Counties, as well as the fact that both those counties are barely attached to the geographical core of the district in Kendall and Blanco Counties.

Compactness Measure	Perry Plan	Jackson Plan
Average Perimeter-to-Area Score	6.7	5.6
Average Smallest-Circle Score	3.7	3.7
Worst Perimeter-to-Area Score	8.0 (District 23)	6.5 (District 28)
Worst Smallest-Circle Score	4.4 (District 28)	4.4 (District 28)

7. Avoiding Needless Pairings

Finally, as noted earlier, the Perry Plan is particularly aggressive in its approach to pairings. Defendants have paired Congressman Smith and Congressman Doggett, while telling the Court the opposite. *See* Defs.' Br. at 13. They conveniently have "unpaired" Congressman Smith and his duly nominated challenger, John Courage. And in their eagerness to preserve Congressman Bonilla's incumbency, they have "unpaired" him from Congressman Cuellar, even though the Texas Legislature knowingly paired them in District 23 in 2003 (just eleven months after Cuellar first ran for Congress), and even though both men have lived in the same district for many years, indeed for the entirety of their political careers.[21]

By contrast, the Jackson Plan makes none of these changes. It stays perfectly neutral as to incumbent (and challenger) locations. Because the sort of manipulations found in the Perry Plan have "no place in a plan formulated by the courts," *Wyche v. Madison Parish Police Jury*, 769 F.2d 265, 268 (5th Cir. 1985); *accord Balderas*, slip op. at 10 n.18; *Vera v. Bush*, 933 F.

[21] Since his initial victory in 1992, Congressman Bonilla has represented District 23, which — dating back to the 1960s — has always included Webb County (or, since 2003, western Webb County). Congressman Cuellar was born in Laredo and represented Webb County in the Texas Legislature from 1987 to 2001. *See CQ's Politics in America 2006: The 109th Congress* 1010-11, 1019 (Jackie Koszczuk & H. Amy Stern eds., 2005).

Supp. at 1351, this Court should leave the existing alignments, including the pairing of Congressmen Bonilla and Cuellar in District 23, as is.

CONCLUSION

For the reasons set forth above and in their opening brief, the Jackson Plaintiffs urge this Court to adopt the Jackson Plan on or before Monday, August 7, 2006, and to order Defendants to conduct the 2006 congressional elections in Districts 21, 23, 25, and 28 under that Plan.

Respectfully submitted,

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July 21, 2006

CERTIFICATE OF SERVICE

I, Sam Hirsch, will electronically serve copies of the Remedial Response Brief of the Jackson Plaintiffs on the following persons on Friday, July 21, 2006:

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